

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 2 2016

OFFICE OF  
MANAGING DIRECTOR

David Tillotson, Esq.  
Law Office of David Tillotson  
4606 Charleston Terrace, N.W.  
Washington, D.C. 20007

Licensee/Applicant: **Bar Broadcasting, Inc.**  
Exemption from Regulatory Fee (Waiver) Silent  
Station  
Disposition: **Dismissed and Denied** (47 U.S.C. §  
159; 47 C.F.R. §§ 0.401, 1.7, 1.1160, 1.1162, and  
1.1166)  
Station: WJHX  
Fee: Fiscal Year (FY) 2014 Regulatory Fee  
Date Request Submitted: Mar. 24, 2014  
Date(s) Delinquent Regulatory Fee Payments: Apr.  
2, and May 7, 2015  
Fee Control No.: RROG 14-00015932

Dear Counsel:

This responds to Licensee's *Request*<sup>1</sup> to "be exempted from the obligation to pay a FY 2014 regulatory fee" because the station "went silent on or before August 1, 2014[, the station] did not operate at all during FY 2014, and the [station] license was automatically forfeited ... as of August 1[, 2014]."<sup>2</sup> As we discuss below, we dismiss and deny on multiple grounds. First, Licensee is not an exempt licensee under 47 U.S.C. § 159(h) and 47 C.F.R. § 1.1162. Next, construing the *Request* as one for a waiver under 47 C.F.R. § 1.1166, Licensee's submission to the Managing Director fails to comply with Commission procedures that require an applicant seeking a waiver, without first paying the fee, to file with the Office of the Secretary both a petition to defer payment, with supporting documentation, and an application for a waiver. In the alternative, we deny the *Request* because Licensee fails to demonstrate good cause and that the public interest will be served. Our records show that Licensee was delinquent in paying the fee when it was due; however, on April 2, 2015, and May 7, 2015, Licensee paid the delinquent FY 2014 regulatory fees, late penalties, administrative charges of collection, penalties, and interest.<sup>3</sup>

<sup>1</sup> Letter from David Tillotson, Esq., 4606 Charleston Terr., N.W., Washington, D.C. 20007-1911 to Mr. John Wilkins, Managing Director, Federal Communications Commission, 445 12<sup>th</sup> St., SW, Washington, DC 20554 (dated Aug. 25, 2014)(rec'd Mar. 24, 2015)(*Request*).

<sup>2</sup> *Id.*

<sup>3</sup> On Dec. 24, 2014, as set forth at 31 U.S.C. §3711(g) and 31 C.F.R. §285.12, the Commission referred Licensee's delinquent debt to the U.S. Treasury for collection action. The Commission's records show that on Apr. 2, 2015, and May 7, 2015, credits were applied to the debt.

## Background

On March 24, 2015, the Commission received Licensee's *Request* addressed to Mr. Jon Wilkins, Managing Director and dated August 25, 2014. Licensee asks that it "be exempted from the obligation to pay a FY 2014 regulatory fee [because the station] went silent on or before August 1, 2014, due to loss of equipment [and the] license was automatically forfeited, by operation of law, as of August 1[, 2014]."<sup>4</sup> Furthermore, Licensee acknowledges it "did not turn in the [station] license for cancellation prior to October 1, 2013 ... because [Licensee] had believed at the time that it would ... return the station to the air."<sup>5</sup> Licensee asserts, "[i]n view of the fact that [the station] did not operate at any time during FY 2014 and it was incapable of operating ... due to [Licensee's] inability to reach an agreement with the owner of [the station's] site ... waiver ... would be appropriate."<sup>6</sup> Licensee suggests that "[t]o rule otherwise would dissuade licensees ... from continuing efforts to resolve the issues that had forced them to [go silent and it would] act as incentive ... to abandon their efforts ...."<sup>7</sup> Licensee stated it "will pay the specified FY 2014 regulatory fee ... by the payment due date on the understanding that the fee will be refunded ... if [the] waiver request is granted."<sup>8</sup>

Pertinent to Licensee's assertion asking to be exempted from paying the regulatory fee, as set forth at 47 U.S.C. §159(h) and 47 C.F.R. §1.1162, an exemption extends only to licensees in the amateur radio service, licensees who qualify as government entities, and licensees who qualify as nonprofit entities. Licensee does not assert or establish that it is eligible for such an exemption, or that Licensee "file[d] with the Secretary ... written documentation establishing the basis for [an] exemption" for nonprofit status as set forth at 47 C.F.R. § 1.1162(c)(1). Moreover, although Licensee asserts it would pay the regulatory fee on or before the due date in 2014, Licensee did not follow through, the fee was delinquent, and it remained unpaid until April 2, and May 7, 2015, when Licensee made a partial and then final payment. Finally, the Commission's records show the Media Bureau cancelled the license October 28, 2014.<sup>9</sup>

## Standards

Licensees are expected to know the Commission's rules and procedures<sup>10</sup> for paying the annual regulatory fees, filing a timely and complete petition to defer payment, and filing a request for waiver. Also, Licensees are expected to know the consequences of failing to pay an annual regulatory fee in a timely manner.

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<sup>4</sup> *Request* at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta\\_det.pl?Facility\\_id=14051](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta_det.pl?Facility_id=14051). See letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, FCC, Washington, DC 20554 to Mr. Pedro Zamora, Bar Broadcasting, Inc., 24486 Brentwood Dr., Brownstown, MI 48183 (Sep. 9, 2014). Commission records show that on Sep. 9, 2014, the Media Bureau sent Licensee warning letters; however, the letters were returned as undeliverable. Later, Licensee's counsel provided proof of operation of Station WZGX, which was reinstated on Dec. 10, 2014.

<sup>10</sup> 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc., Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).



In establishing the regulatory fee program mandated by Congress,<sup>11</sup> the Commission set out the relevant schedules of the annual fees and established procedures for, among other matters, payment, waivers, reductions, and deferral, refunds, error claims, and penalties.<sup>12</sup>

Under 47 U.S.C. § 159(h) and 47 C.F.R. § 1.1162 licensees in the amateur radio service, licensees who qualify as government entities, and licensees who qualify as nonprofit entities may be exempt from paying regulatory fees. In such cases, the licensee must demonstrate that it is within the designated exemption, and in the case of a nonprofit entity, as is set forth at 47 C.F.R. § 1.1162(c)(1), the licensee must “file with the Secretary ... written documentation establishing the basis for [an] exemption.”

The Commission’s rules at 47 C.F.R. §§ 0.401, 1.7, and 1.1166 establish the proper locations and procedures for filing waiver requests and petitioning for deferral and the consequence of dismissal for failing to comply with those rules. The Commission has designated specific offices to receive and process certain matters, thus a request for relief is *filed* upon receipt at the location designated by the Commission.<sup>13</sup> Under section 1.1166 of the Commission’s rules, a petition to waive a regulatory fee “must be accompanied by the required fee and FCC Form.”<sup>14</sup> If the applicant includes the fee, the request must be submitted to the Commission’s lockbox bank.<sup>15</sup> Waiver requests that do not include the required fees or form will be dismissed unless accompanied by a separate petition to defer payment due to financial hardship, supported by documentation of the financial hardship.<sup>16</sup> “If no fee payment is submitted, the request should be filed with the Commission’s Secretary.”<sup>17</sup> Filing is accomplished by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

The Commission recognizes that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of *good cause*<sup>18</sup> and a finding that the *public interest will be served thereby*.<sup>19</sup>

<sup>11</sup> See 47 C.F.R. § 1.1151.

<sup>12</sup> See 47 C.F.R. Part 1, Subpart G.

<sup>13</sup> 47 C.F.R. §§ 0.401 (“The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations ... will be returned to the applicant without processing.”); 1.7 (“pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.”); *Champion Communication Services, Inc., Order on Reconsideration*, 15 FCC Rcd 23782, 23783-84 (WTB 2000).

<sup>14</sup> 47 C.F.R. § 1.1166(c).

<sup>15</sup> 47 C.F.R. § 1.1166(a)(1).

<sup>16</sup> 47 C.F.R. § 1.1166(b); *Assessment and Collection of Regulatory Fees For Fiscal Year 2011, Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) (“A regulatee’s mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.”).

<sup>17</sup> 47 C.F.R. § 1.1166(a)(2).

<sup>18</sup> 47 C.F.R. § 1.3.

<sup>19</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166 (“The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote



The applicant has the burden of demonstrating relief is warranted,<sup>20</sup> i.e., that special circumstances warrant a deviation from the general rule to collect the regulatory fee, and that the deviation will serve the public interest.<sup>21</sup> Under 47 C.F.R. § 1.1166,

The fees ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. ... (a) ... All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission.

An applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.<sup>22</sup> A "sufficient showing of financial hardship"<sup>23</sup> is more than "[m]ere allegations or documentation of financial loss, standing alone. Rather, [the Commission may] grant a waiver only when the impact of the regulatory fee will affect a regulatee's ability to serve the public. It [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."<sup>24</sup> The relevant financial documents include the licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of the licensee's officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.<sup>25</sup>

Under 47 C.F.R. § 1.1160, refunds are made upon request only in enumerated instances.

### Discussion

Licensee asserts that it should be "exempted from the obligation to pay a FY 2014 regulatory fee" because it was "silent on or before August 1, 2014." Even so, Licensee does not

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the public interest."). See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. granted in part*, 10 FCC Rcd 12759 (1995) (1994 *Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>20</sup> *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

<sup>21</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>22</sup> 1994 *Report and Order*, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFD Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

<sup>23</sup> Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (FY 1994 MO&O).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*



establish it is or should be treated as exempt under 47 U.S.C. § 159(h) and 47 C.F.R. §1.1162 as being in the amateur radio service, a government entity, or a qualified nonprofit entity. Indeed, Licensee reports itself to be a "for profit corporation" owned by corporation registered under the laws of the State of Michigan.<sup>26</sup> Licensee is not exempt from paying the regulatory fees; therefore, we dismiss Licensee's *Request* for an exemption from paying the fee. The Commission will not speculate to fill gaps in information that Licensee should have provided,<sup>27</sup> even so, we look to whether an alternative ground reasonably exists in Licensee's *Request* for the relief sought.

Licensee states it was "silent on or before August 1, 2014," it did not operate "at all during FY 2014," and its license canceled on August 1, 2014. As noted, above, the Commission records show the Media Bureau canceled the license on October 28, 2014,<sup>28</sup> not August 1, 2014. Nonetheless, cancellation after October 1, 2013, does not excuse a licensee from paying the FY 2014 regulatory fee. Additionally, silent or dark status, a condition that a licensee may report under 47 C.F.R. §73.1740(a)(4), is not a ground to defer payment or to waive the fee, rather the circumstances to establish a waiver must fall within the standards set forth at 47 C.F.R. § 1.1166. Section 1.1166 provides that a waiver may be "waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."

Licensee submitted the *Request* without paying the fee, and although Licensee asserted it would pay the fee by the due date, in fact it did not. Licensee did not assert a basis for seeking relief without first paying the fee, which compels us to construe from the limited information whether a basis exists for waiver within our rule, and then, whether Licensee raised a valid ground to defer payment of the fee. Under section 1.1166(c), "[w]aiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."

Looking to Licensee's *Request*, we consider whether there is a ground to construe it as presenting a proper case of financial hardship. Licensee failed to meet the standard. Even if Licensee had claimed financial hardship, "[a] ... mere allegation of [such] does not automatically entitle [Licensee] to a deferral of its obligation to pay regulatory fees ... if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed."<sup>29</sup>

On September 10, 2014, and earlier, the Commission published Procedures for Filing Waivers, Reductions and Deferments of Regulatory Fees,<sup>30</sup> which provided,

<sup>26</sup> FCC 323, Ownership Report for Commercial Broadcast Stations, File No. BOA-20121107ALF (Nov. 1, 2013).

<sup>27</sup> *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner ... has the 'burden of clarifying its position' before the agency."); see also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

<sup>28</sup> [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta\\_det.pl?Facility\\_id=14051](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta_det.pl?Facility_id=14051).

<sup>29</sup> Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd 10812, 10819, ¶17 (2011).

<sup>30</sup> Procedures for Filing Waivers, Reductions and Deferments of Regulatory Fees, FCC (Sep. 10, 2014) 2014 WL 4460322 (F.C.C.), Procedures for Filing Waivers, Reductions and Deferments of Regulatory Fees, FCC (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.).



Under 47 U.S.C. 159(d) and 47 C.F.R. § 1.1166, the Commission may waive, reduce, or defer payment of a fee in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Licensees requesting a waiver or reduction must demonstrate both of those required elements, and licensee either must pay the full fee or submit with the request a separate petition to defer payment due to financial hardship that is fully supported by the required documentation of the financial hardship. If the licensee pays the fee, and the Commission grants the request, the Commission will refund the appropriate amount. The Commission will dismiss any request to waive or reduce a regulatory fee that does not include full payment or the required separate petition for deferral with supporting documentation, and under 47 U.S.C. 159(c) and 31 U.S.C. 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. A request for a waiver or reduction in fees must be accompanied by a fee payment by the due date. If the licensee does not pay the fee, but includes a petition to defer payment, licensee must file both the request and separate petition to defer payment with the Commission's Secretary, along with the required supporting financial documentation. Submissions sent to other locations or directly to Commission staff may be dismissed. For example, a request sent by email to the Help Desk is improper, and it is not considered filed, and if the fee is unpaid, the unpaid fee amount is deemed delinquent, resulting in accrual of additional charges from the date of delinquency. Furthermore, the Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.

Notwithstanding these admonishments, Licensee submitted directly to the Managing Director the *Request*. Moreover, Licensee did not pay the fee or file a separate petition to defer payment with supporting documentation.

Nothing in Licensee's *Request* may be construed as a petition with adequate information from which the Commission may determine applicant demonstrated *both good cause* and that the *public interest is served*.<sup>31</sup> Licensee's submission fails to meet the established standards necessary to complete the filing with the Commission and to submit a proper separate petition to defer payment supported with financial documentation of financial hardship. Hence, under 47 C.F.R. §§ 0.401, 1.7, and 1.1166,<sup>32</sup> we dismiss the submission because it is not filed, and, as a separate matter, we dismiss the submission because Licensee did not pay the fee or file a separate petition to defer payment.<sup>33</sup> Consequently, the fee was delinquent until May 7, 2015.

<sup>31</sup> 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166.

<sup>32</sup> 47 C.F.R. § 1.1166(a) ("Requests for waivers ... or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission.").

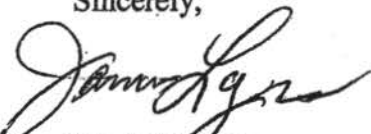
<sup>33</sup> 47 C.F.R. § 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship."); Assessment and Collection of Regulatory Fees for Fiscal Year 2011, *Report and Order*, 26 FCC Rcd

This resolves the matter; however, as a matter of administrative economy we looked to the submission, and for the following grounds, in the alternative, we deny the *Request*. Our disposition also dismisses that portion of the *Request* seeking a refund.<sup>34</sup>

Each licensee has the burden of demonstrating compelling and extraordinary circumstances that a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for the Commission's regulatory action.<sup>35</sup> Licensee's assertions that the station was silent because of an equipment failure, that it had a problem with a lessor, and that these matters led to cancellation, do not establish grounds for a waiver. Indeed, this construct does not present compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs. In addition, Licensee did not establish that it is entitled to a refund. We therefore deny the *Request*.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

  
FOR: Mark Stephens  
Chief Financial Officer

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10812,10819, ¶17 (2011) ("Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed.").

<sup>34</sup> See 47 C.F.R. §1.1160(a)(1) & (3).

<sup>35</sup> *Id.*, 1994 Report and Order, 9 FCC Rcd at 5344.